



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No: WY-046-FOR; Docket ID: OSM-2014-0007; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Wyoming regulatory program (Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes both revisions of and additions to its coal rules and regulations concerning valid existing rights and individual civil penalties, as well as ownership and control provisions. Wyoming also proposes to revise a provision

concerning periodic monitoring of blasting. Wyoming revised its program to address deficiencies we previously identified, which are now consistent with the corresponding Federal regulations and SMCRA.

DATES: The effective date is [Insert date 30 days after date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

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I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of

surface coal mining and reclamation operations on non-Federal and non-Tribal lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Proposed Amendment

By letter dated September 30, 2014 (Administrative Record Docket ID No. OSM-2014-0007), Wyoming sent OSMRE an amendment to its program under SMCRA. Wyoming submitted the amendment to address deficiencies that OSMRE previously identified during its review of Wyoming's program related to valid existing rights determination requests, as discussed more fully below, and individual civil penalties (WY-044-FOR; Docket ID No. OSM-2013-0001) and ownership and control (WY-045-FOR; Docket ID No. OSM-2013-0002) amendments. The amendment also revises a provision about periodic monitoring of blasting in response to a concern that the Casper

Area Office identified during its annual oversight review of the Wyoming program.

We announced receipt of the proposed amendment in the November 12, 2014, **Federal Register** (79 FR 67116). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Document ID No. OSM-2014-0007). OSMRE did not hold a public hearing or meeting, as neither were requested. The public comment period ended on December 12, 2014. We received comments from two Federal agencies (discussed below in section "IV. Summary and Disposition of Comments").

III. OSMRE's Findings

The following are the findings we made about the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Minor Revisions to Wyoming's Rules.

Wyoming proposed minor grammatical changes to several previously approved rules. Wyoming did not propose any substantive changes to the text of these regulations.

Because the proposed revisions to these previously approved rules are minor and result in no substantive changes to the Wyoming program, we are approving the changes and find that they are no less effective than the corresponding Federal regulations at 30 CFR parts 700 through 887. The specific, minor revisions to the Code of Wyoming Rules and

the Federal regulation counterparts are as follows:

- Chapter 1, Section 2(co), related to *Notice of violation*, [30 CFR 701.5];
- Chapter 2, Section 2(a)(ii)(A)(II), related to *Adjudication Requirements*, [30 CFR 778.14(a)(2)];
- Chapter 2, Section 2(a)(ii)(B), related to *Adjudication Requirements*, [30 CFR 778.14(c)];
- Chapter 6, related to *Blasting for Surface Coal Mining Operations*, [30 CFR sections 816.61 and 817.61]
- Chapter 12, Section 1(a)(vii)(A), related to *VER submission requirements and procedures*, [30 CFR 761.16(b)];
- Chapter 12, Section 1(a)(vii)(B)(IV), related to *VER submission requirements and procedures*, [30 CFR 761.16(c)(4)];
- Chapter 12, Section 1(a)(vii)(E), related to *VER submission requirements and procedures*, [30 CFR 761.16(f)];
- Chapter 12, Section 1(a)(x), related to *VER submission requirements and procedures*, [30 CFR 773.12];
- Chapter 12, Section 1(a)(xiv)(D)(II), related to *VER submission requirements and procedures*, [30 CFR 774.11(g)(2)];
- Chapter 16, Section 2(h), related to *Enforcement*, [30 CFR 774.12a]; and
- Chapter 16, Section 4(c)(i), related to *Individual Civil Penalties*, [30 CFR 846.14(a)(1)].

B. Revisions to Wyoming's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations.

1. Minor Wyoming Additions and Revisions That Mirror SMCRA and the Federal Regulations.

Wyoming proposes additions and revisions to several regulations containing language that is the same as or substantially similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore, we are approving them.

In particular, Wyoming is revising Chapter 6, Section 4(b)(i)(A); *Blasting for Surface Coal Mining Operations; Blasting Standards*, after OSMRE identified an inconsistency in this provision in its Annual Oversight Report for Evaluation Year 2013. Wyoming's revision makes the provision consistent with the corresponding language at 30 CFR 816.67(b)(2)(i).

The specific citations to Wyoming additions and revisions that have the same meaning as the corresponding provisions of the Federal regulations, along with the applicable Federal counterpart, are as follows:

- Chapter 2, Section 2(a)(ii)(A)(I); *Permit Application Requirements*; adjudication requirements and statement of compliance; [30 CFR 778.14(a)(1)];
- Chapter 6, Section 4(b)(i)(A); *Blasting for Surface Coal Mining Operations; Blasting Standards*; periodic monitoring of blasting; [30 CFR 816.67(b)(2)(i)];

- Chapter 12, Section 1(a)(x)(D)(I); *Permitting Procedures*; unanticipated events or conditions at remining sites; [30 CFR 773.13(a)(2)]; and
- Chapter 16, Section 4(c)(i)(A); *Individual Civil Penalties*; amount of civil penalty; [30 CFR 846.14(a)(1)].

2. *Chapter 1, Section 2(aa); Definition of “Control or Controller.”*

In a letter to Wyoming dated October 2, 2009, OSMRE identified several required rule changes under 30 CFR 732.17(c) (“732 letter”) concerning ownership and control. Item A.2 of the 732 letter required Wyoming to adopt a State counterpart to the Federal definition of “Control or Controller” at 30 CFR 701.5 (OSMRE’s 2000 Rule, 65 FR 79852, 79594 (Dec. 19, 2000) and OSMRE’s 2007 Rule, 72 FR 68000, 68003 (December 3, 2007)).

In response, Wyoming proposed to define the term “Control or Controller” at Chapter 1, Section 2(aa) in a previous rulemaking action (WY-045-FOR) as a State counterpart to the Federal regulations at 30 CFR 701.5. OSMRE replied in a letter dated April 9, 2013, (Administrative Record Document ID. No. WY-50-09) that in order to maintain consistency with its own rules and be no less effective than the corresponding Federal regulations at 30 CFR 701.5, Wyoming must include the term “surface” in its newly proposed definition of “Control or Controller” at Chapter 1, Section 2(aa). In addition, we required Wyoming to reinsert the phrase “For Surface Coal Mining Operations” in the title for Chapter 2 that was simply entitled, “Permit Application

Requirements.” As a result, we did not approve Wyoming’s newly proposed rule at Chapter 1, Section 2(aa) in a December 7, 2017, **Federal Register** document (82 FR 57664, 57668).

In response, Wyoming now proposes to include the term “surface” in its newly proposed definition of “Control or Controller” at Chapter 1, Section 2(aa). In addition, Wyoming reinserts the phrase “For Surface Coal Mining Operations” in the title for Chapter 2 concerning permit application requirements. Wyoming’s proposed revisions are consistent with and no less effective than the corresponding Federal regulations at 30 CFR 701.5. Accordingly, we are approving the aforementioned rule changes.

3. Chapter 2, Section 2(a)(i)(B); Providing permit history information.

Item K.3 of OSMRE’s October 2, 2009, 732 letter instructs the reader to “*See* LQD [Land Quality Division] Rules and Regulations, Chapter 1, Section 2 and Chapter 2, Section 2” about counterpart rules to the Federal requirements for providing applicant and operator permit history information at 30 CFR 778.12. The 732 letter indicates that the requirement for an applicant to provide the permit history information for the operator was newly added in OSMRE’s 2000 rule, and it was constructed from provisions in previous 30 CFR 778.13.

In response, Wyoming proposed in a previous rulemaking action (WY-045-FOR) to revise its rules at Chapter 2, Section 2(a)(i)(B), to require permit applicants to identify additional organizational members in an application for a surface coal mining permit,

including owners of record of ten (10) percent or more of the business entity in question, as required under 30 CFR 778.11(b).

Wyoming's proposed rule at Chapter 2, Section 2(a)(i)(B), includes counterpart provisions to 30 CFR 778.11(b)(1)-(3). In addition, the counterpart language to 30 CFR 778.11(b)(4) was found in proposed subsection (D). As a result, OSMRE determined that the language in these provisions, taken together, are consistent with and no less effective than the Federal regulations at 30 CFR 778.11(b). However, Wyoming's existing rule language in subsection (B) warranted the inclusion of additional clarifying language to be consistent with and no less effective than both the Federal counterpart rule at 30 CFR 778.12(a) and its rule language in subsection (F) regarding operator's permit history information. Consequently, we did not approve Wyoming's proposed revisions to Chapter 2, Section 2(a)(i)(B), and we published that decision in a December 7, 2017, **Federal Register** document (82 FR 57664, 57668).

In response, Wyoming now proposes to further revise subsection (B) by providing additional language that requires permit applicants to provide permit history information for the operator. Specifically, Wyoming proposes to revise Chapter 2, Section 2(a)(i)(B), to be consistent with the Federal regulations at 30 CFR 778.12(a) by requiring that a complete identification of interests must include a list of all the names under which the applicant, the applicant's partners or principal shareholders, and the operator and the operator's partners or principal shareholders operates or previously operated a surface coal mining operation in the United States within the five years period preceding the date

of submission of the application. Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 2, Section 2(a)(i)(B), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 778.12(a), and satisfies the requirement specified in Item K.3 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

4. Chapter 12, Section 1(a)(vii)(F); Availability of Records.

In a letter to Wyoming dated April 2, 2001, OSMRE identified several required rule changes under 30 CFR 732.17(c) concerning valid existing rights. Item G-4 of the 732 letter required Wyoming to submit State counterpart provisions to 30 CFR 761.16(g) about availability of records requirements.

In response, Wyoming proposed to revise its rules at Chapter 12, Section 1(a)(vii)(F), in a previous rulemaking action (WY-040-FOR) by requiring that the Division or agency responsible for processing a valid existing rights (VER) request must make a copy of the request and related materials available to the public. OSMRE subsequently did not approve proposed subsection (F) in a February 14, 2013, **Federal Register** document (78 FR 10512, 10517) because Wyoming did not specify in the heading that the rule pertains to "Availability of records" and did not provide counterpart language to the Federal requirements in 30 CFR 761.16(g) explaining that, in addition to the VER request and related materials, records associated with any subsequent VER determination must also be made available to the public. As a result, we required

Wyoming to revise its proposed rule language at Chapter 12, Section 1(a)(vii)(F), by making the aforementioned changes.

In response to the February 14, 2013, **Federal Register** document, Wyoming proposed to further revise its rules at Chapter 12, Section 1(a)(vii)(F), by specifying that the rule pertains to “Availability of records” (WY-044-FOR). Wyoming also proposed language explaining that, in addition to the valid existing rights request and related materials, records associated with any subsequent valid existing rights determination under subsection (D) of its rules shall be made available to the public in accordance with the requirements and procedures of W.S. section 35-11-1101. Once again, OSMRE did not approve proposed subsection (F) in a March 31, 2014, **Federal Register** document (79 FR 17863, 17865). In that document, OSMRE stated that while referenced statute, W.S. section 35-11-1101, satisfies some of the requirements of 30 CFR 840.14, it fails to satisfy all of them. In particular, OSMRE explained that 30 CFR 840.14(b) specifies that the regulatory authority must make copies of all records immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond. Because W.S. section 35-11-1101 failed to include a similar provision, Wyoming’s reference to the statute did not satisfy the requirements of 30 CFR 840.14, as referenced in 30 CFR 761.16(g), and newly proposed subsection (F) remained less effective than the Federal regulations at 30 CFR 761.16(g).

Title 30 CFR 761.16(g) requires the agency responsible for processing valid

existing rights determination requests to make a copy of the request available to the public in the same manner as it makes permit applications available under 30 CFR 773.6(d). The responsible agency must also make records associated with the valid existing rights request and any subsequent determination available to the public in accordance with the requirements and procedures of 30 CFR 840.14 or 30 CFR 842.16.

Wyoming now proposes to revise Subsection (F) by providing additional statutory and regulatory citations to clarify that valid existing rights related documents are subject to the same public availability requirements as are permit applications. Specifically, Wyoming references its statutory provisions about the availability of records to the public and confidentiality at W.S. section 35-11-1101, and the requirements for public inspection of mining permit applications at W.S. section 35-11-406(d) in the Wyoming Environmental Quality Act. Wyoming also references its Public Records Act at W.S. sections 16-4-201 through 16-4-205, as well as the Division's rules and regulations related to public review and participation.

Lastly, Wyoming proposes language requiring, at a minimum, that copies of records associated with valid existing rights requests must be made immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area in compliance with the Federal regulations at 30 CFR 840.14 (b), (c), and (d).

Wyoming's statutory counterpart to 30 CFR 840.14(a) concerning the availability

of all documents relating to applications for and approvals of surface coal mining and reclamation operation permits and inspection and enforcement actions to the OSMRE Director upon request is found at W.S. section 35-11-1101(b). Wyoming's regulatory counterpart to 30 CFR 773.6(d)(1) about public availability of permit applications is found at Chapter 12, Section 1(b), and requires, in pertinent part, that all procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions must, unless otherwise provided, apply to permit revisions, amendments, renewals and permit transfer, assignment or sale of permit rights.

In its Statement of Principal Reasons for Adoption (SOPR), Wyoming explains that, with the exception of references to the State requirements, the additional clarifying language is a mirror of the Federal language and is intended to ensure that the minimum Federal requirements in 30 CFR 840.14 are met. Taken together, Wyoming's references to its statutes, rules, and the Federal regulations regarding public availability of records meet the requirements of 30 CFR 840.14, as referenced in 30 CFR 761.16(g). We find that newly proposed Chapter 12, Section 1(a)(vii)(F), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 761.16(g), and satisfies the requirements specified in Item G-4 of OSMRE's April 2, 2001, 732 letter. Accordingly, we approve it.

5. Chapter 12, Section 1(a)(viii)(B); Final AVS Compliance Review.

Item E.4 of OSMRE's October 2, 2009, 732 letter required Wyoming to adopt a State counterpart to the Federal requirements for reviewing an applicant's or operator's permit history at 30 CFR 773.10 (OSMRE's 2000 Rule, 65 FR 79582, 79664 and OSMRE's 2007 Rule, 72 FR 68000, 68029). The preamble discussion of the 2007 rule states that the provision for an additional review was retained to determine if there are undisclosed controllers when an applicant or operator is determined to have no previous mining experience.

In response to the 732 letter, Wyoming revised its rules at Chapter 12, Section 1(a)(viii)(B), in a previous rulemaking action (WY-045-FOR) to include State counterpart language to the Federal regulations at 30 CFR 773.10(a)-(c) that address an applicant's or operator's permit history. OSMRE determined that Wyoming's newly proposed rule language is consistent with and no less effective than the Federal regulations at 773.10(a) and (b).

However, Wyoming's proposed rule at subsection (B) warranted the inclusion of additional clarifying language with respect to conducting additional ownership and control investigations to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.10(c). As a result, we did not approve Wyoming's newly proposed rule at Chapter 12, Section 1(a)(viii)(B), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57669).

In response, Wyoming now proposes to revise subsection (B) by including a provision for additional review to determine if there are undisclosed controllers when an

applicant or operator is determined to have no previous mining experience. Specifically, Wyoming revises proposed Chapter 12, Section 1(a) (viii) (B), to be consistent with the Federal regulations at 30 CFR 773.10(c) by stating that additional ownership and control investigations may be conducted under subsection (ix)(E) to determine if someone else with mining experience controls the mining operation if the applicant or operator does not have any previous mining experience. Subsection (ix)(E) of Wyoming's rules includes counterpart language to 30 CFR 774.11(f), which is referenced in 30 CFR 773.10(c). Wyoming also replaces the term "regulatory authority" with "Division" in order to maintain consistency throughout its rules.

Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 12, Section 1(a)(viii)(B), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 773.10, and satisfies the requirements specified in Item E.4 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

6. Chapter 12, Section 1(a)(xiv)(C); Challenges to Ownership or Control Listings in AVS.

On December 3, 2007, OSMRE published a new Ownership and Control; Permit and Application Information; and Transfer, Assignment, or Sale of Permit rights Federal rulemaking (72 FR 6800). The new Federal regulation at 30 CFR 773.26(e) allowed a person who is unsure why he or she is shown in OSMRE's Applicant Violator System (AVS) as an owner or controller of a surface coal mining operation to request an informal

explanation from OSMRE's AVS office. The provision also required a response to such a request within 14 days. The preamble discussion of the 2007 Rule clarified at 30 CFR 773.26(e) that a person listed in the AVS may request an informal explanation from OSMRE's AVS office at any time and should expect a response within 14 days.

Item F.2 of OSMRE's October 2, 2009, 732 letter indicated that Wyoming did not have a State counterpart to 30 CFR 773.26(e). In response, Wyoming revised its rules at Chapter 12, Section 1(a)(xiv)(C), in a previous rulemaking action (WY-045-FOR) to include a State counterpart provision to the Federal regulations at 30 CFR 773.26(e). During OSMRE's review of the amendment, we found that while Wyoming's newly proposed rule language clarifies that a person listed in AVS may request an informal explanation from the AVS office at any time, it did not include language requiring a response to such a request within 14 days. Consequently, we did not approve Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(C), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57670).

In response, Wyoming now proposes additional clarifying language that references the Federal regulations at 30 CFR 773.26(e), which states that within 14 days of a request for an informal explanation, the AVS Office will provide a response describing why a person is listed in AVS.

In its SOPR, Wyoming explains that it decided to include a citation to the Federal regulations to account for the many variables that may affect the timing of a response if the State were to provide one. For example, OSMRE's AVS Office noted that Wyoming

may not have access to documents that cause an entry into AVS if the operator has operations in multiple jurisdictions.

Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(C), is consistent with and no less effective than the Federal regulations at 30 CFR 773.26(e), and satisfies the requirement specified in Item F.2 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

7. Chapter 12, Section 1(a)(xiv)(F); Written agency decision on challenges to ownership and control listings or findings.

Item F.4 of OSMRE's October 2, 2009, 732 letter required Wyoming to adopt a State counterpart to the Federal requirements about written agency decisions on challenges to ownership and control listings or findings at 30 CFR 773.28 (OSMRE's 2000 Rule, 65 FR 79852, 79666 and OSMRE's 2007 Rule, 72 FR 68000, 68030).

In response, Wyoming proposed new rules at Chapter 12, Section 1(a)(xiv)(F), in a previous rulemaking action (WY-045-FOR) to include State counterpart provisions to the Federal regulations at 30 CFR 773.28(a)-(f) that address the requirements for written agency decisions on challenges to ownership and control listings or findings.

Although OSMRE found that Wyoming's newly proposed rule language was consistent with and no less effective than the Federal regulations at 30 CFR 773.28(a)-(d), additional clarifying language was required with respect to appeals of written decisions to be consistent with and no less effective than the Federal counterpart rule at 30 CFR

773.28(e). Wyoming's proposed language merely stated that "appeals of written decisions will be administered under the Department's Rules of Practice and Procedure." Wyoming also failed to include a counterpart provision to 30 CFR 773.28(f) concerning required updates to the AVS following the Wyoming Land Quality Division's (Division) written decision or any decision by a reviewing administrative or judicial tribunal.

Finally, the last sentence of proposed subsection (F) was very general and only stated that "AVS shall be revised as necessary to reflect these decisions." As a result, we did not approve Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(F), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57670).

In response, Wyoming proposes to further revise subsection (F) to require that all administrative remedies must be exhausted before seeking judicial review of an ownership and control decision and to add the requirement that the Division must update the AVS, as appropriate, to be consistent with 30 CFR 773.28(e) and (f), respectively. Specifically, Wyoming revises proposed Chapter 12, Section 1(a)(xiv)(F), to be consistent with the Federal regulations at 30 CFR 773.28(e) by requiring that all administrative remedies must be exhausted under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of the Rules and Regulations before seeking judicial review. Newly proposed subsection (F) also includes counterpart language to 30 CFR 773.28(f) that requires the Division to review the information in the AVS following its written decision or any decision by a reviewing administrative or

judicial tribunal about a challenge to ownership or control listings or findings to determine if it is consistent with the decision. If it is not, the Division must promptly revise the information to reflect the decision.

Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(F), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 773.28(a)-(f), and satisfies the requirements specified in Item F.4 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

8. Chapter 12, Section 1(b)(ii); Transfer, Assignment or Sale of Permit Rights.

Item I. of OSMRE's October 2, 2009, 732 letter instructs the reader to "See W.S. § 35-11-408" about transfer, assignment, or sale of permit rights (TAS). The 732 letter states that the 2007 Rule clarifies, at (a) and (d) of 30 CFR 774.17, that at the regulatory authority's discretion, a prospective successor in interest, with sufficient bond coverage, may continue to mine during the TAS process. This recognizes that an acquiring entity becomes the successor in interest to the rights granted under the permit (under 30 CFR 701.5) only after the regulatory authority approves the transfer, assignment, or sale.

In response, Wyoming proposed to revise its existing rule at Chapter 12, Section 1(b), in a previous rulemaking action (WY-045-FOR) to apply all procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions to permit

transfer, assignment or sale of permit rights. Similarly, Wyoming proposed to revise subsection (b)(ii) by applying the requirements imposed by W.S. section 35-11-408 about procedures for permit transfers to the assignment or sale of permit rights. Wyoming also revised subsection (b)(ii)(B) by adding a cross reference to its rules at Chapter 2, Section 2(a)(i) through (iii), which is the counterpart to 30 CFR part 778 regarding permit application requirements for all legal, financial, compliance and related information. Finally, Wyoming added language to require that a potential transferee's statement of qualifications must include the name, address and permit number of the existing permit holder, which is the counterpart to 30 CFR 774.17(b)(1)(i).

OSMRE subsequently approved Wyoming's proposed revision to Chapter 12, Section 1(b), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57671).

However, we did not approve Wyoming's proposed revisions to subsection (b)(ii) because they did not address many of the specific application approval requirements for a transfer, assignment, or sale of permit rights at 30 CFR 774.17. For example, the proposed rule changes did not include counterpart provisions to 30 CFR 774.17(b)(2) about advertisement requirements for newly filed applications; subsection (d) about criteria for approval by the regulatory authority that allows a permittee to transfer, assign, or sell permit rights to a successor; and subsection (e) about notification requirements.

In addition, the language in W.S. section 35-11-408 and subsections (b)(ii)(A) and (B) of Wyoming's rules all refer to a "potential transferee" and do not address the assignment or sale of permit rights. OSMRE noted that Wyoming neither defines

“potential transferee” in its rules nor has a counterpart to the Federal definition of “successor in interest” at 30 CFR 701.5 as it relates to TAS in 30 CFR 774.17. As a result, we required Wyoming to submit counterpart provisions to the specific TAS requirements at 30 CFR 774.17(a)-(f) (OSMRE’s 2000 Rule, 65 FR 79852, 79668 (Dec. 19, 2000) and OSMRE’s 2007 Rule, 72 FR 68000, 68030), as well as a counterpart to the Federal definition of “successor in interest” at 30 CFR 701.5.

In response, Wyoming proposes counterpart rules to the specific TAS requirements at 30 CFR 774.17(a)-(f). Wyoming’s existing rule at Chapter 12, Section 1(b), the revisions which were approved in the December 7, 2017, **Federal Register** document, is the counterpart provision to 30 CFR 774.17(b) about application requirements for approval of the transfer, assignment, or sale of permit rights. Chapter 12, Section 1(b), states, in pertinent part, that all procedural requirements of the Act and the regulations relating to approval or disapproval of permit applications must, unless otherwise provided, apply to permit transfer, assignment, or sale of permit rights. In addition, Wyoming’s general permit application requirements at Chapter 2, Section 1(a), state that all applications must be filed in a format required by the Administrator of the Land Quality Division and must include, at a minimum, all information required by the Act. Further, subsection (b) requires that information set forth in the application must be current and must be presented clearly and concisely. OSMRE interprets these existing State rules, taken together, as being counterpart provisions to the Federal regulations at 30 CFR 774.17(b)(1)(ii), which require an applicant for approval of the transfer, assignment,

or sale of permit rights to provide the regulatory authority with an application that includes a brief description of the proposed action requiring approval.

Wyoming next proposes to revise Chapter 12, Section 1(b)(ii), to be consistent with the Federal regulations at 30 CFR 774.17(a) by applying the requirements imposed by W.S. section 35-11-408 and the section to a permit transfer, assignment, or sale of permit rights. Revised Section 1(b)(ii) also includes a definition for the previously undefined term “potential transferee,” the language for which is identical to the Federal definition of “successor in interest.”

Wyoming’s existing regulation at Chapter 12, Section 1(b)(ii)(A), is the counterpart to 30 CFR 774.17(b)(3), which requires an applicant [potential transferee] for approval of the transfer, assignment, or sale of permit rights to obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations. As it did in the previous rulemaking action (WY-045-FOR), Wyoming again proposes to revise its rules at Chapter 12, Section 1(b)(ii)(B), for applications for a permit transfer, assignment, or sale of permit rights by adding a cross reference to Wyoming’s regulations at Chapter 2, Section 2(a)(i) through (iii), which is the counterpart to 30 CFR part 778 about permit application requirements for all legal, financial, compliance, and related information. Wyoming also adds language requiring that a potential transferee’s statement of qualifications must include the name, address and permit number of the existing permit holder. Wyoming’s proposed revisions to Chapter 12, Section 1(b)(ii)(B), are consistent with the TAS application requirements set forth at 30 CFR 774.17(b)(1)(i)

and (iii).

In addition, Wyoming proposes new substantively identical State counterpart provisions to the Federal regulations in the Code of Wyoming Rules at Chapter 12, Section 1(b)(ii)(C), pertaining to advertisement requirements for newly filed permit transfer, assignment or sale of permit rights applications found at 30 CFR 774.17(b)(2); subsection (D) regarding public participation requirements allowing any person having an interest, which is or may be adversely affected by a decision on TAS, to submit written comments on the application, similar to the provisions in 30 CFR 774.17(c); subsections (E)(I)-(III) concerning criteria for approval by the regulatory authority that allows a permittee to transfer, assign, or sell permit rights to a successor in interest [potential transferee] similar to the provisions in 30 CFR 774.17(d)(1)-(3); subsections (F)(I)-(II) pertaining to notification requirements as they apply to applications for TAS, similar to the provisions in 30 CFR 774.17(e)(i)-(ii); and subsection (G) regarding continued operation under existing permit that requires a successor in interest [potential transferee] to assume the liability and reclamation responsibilities of the existing permit and to conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit under the Environmental Quality Act and the Division's rules and regulations similar to the provisions in 30 CFR 774.17(f).

Wyoming's revised and newly proposed rules at Chapter 12, Section 1(b)(ii)(B), (E), (F), and (G), use the previously discussed State term "potential transferee," rather

than the Federal term “successor in interest.” In addition, the terms “Division” and “Administrator” are used instead of the term “regulatory authority” in the revised and newly proposed State rules at Chapter 12, Section 1(b)(ii)(D), (E), and (F). Otherwise, Wyoming’s proposed rule language is substantively identical to the aforementioned counterpart Federal provisions.

Based on the discussion above, we are approving Wyoming’s proposed definition of “potential transferee” at Chapter 12, Section 1(b)(ii), as the State counterpart to the identical Federal definition of “successor in interest.” We also find that Wyoming’s proposed revisions to its existing rules at Chapter 12, Section 1(b)(ii)(B), as well as the newly proposed rules at subsections (C) through (G) are consistent with and no less effective than the Federal regulations at 30 CFR 774.17(a)-(f), and satisfy the requirements specified in Item I of OSMRE’s October 2, 2009, 732 letter. Accordingly, we are approving them.

IV. Summary and Disposition of Comments

Public Comments

OSMRE asked for public comments on the amendment (Administrative Record Document ID No. OSM-2014-0007). OSMRE did not receive any public comments or a request to hold a public meeting or public hearing.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253), we requested comments on the amendment from various Federal agencies concerned with or having special expertise relevant to the Wyoming program amendment (Administrative Record No. WY-51-03). We received comments from two Federal Agencies.

The National Park Service (NPS) commented in a November 3, 2014, email response (Administrative Record Document ID No. OSM-2014-0007-0006), and the Mine Safety and Health Administration (MSHA) commented in a November 7, 2014, letter (Administrative Record Document ID No. OSM-2014-0007-0005). The NPS responded that it had reviewed the project and did not find it necessary to comment at this time. MSHA responded that it reviewed the formal State program amendment and had no comments to the proposed changes to the State's statute as written.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to seek the views of the EPA on the program amendment and obtain the written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from the EPA (Administrative Record No. WY-51-03). EPA did not respond to our request. Because the amendment does not relate to air or water quality

standards, written concurrence from the EPA is not necessary.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Although the amendment will not have an effect on historic properties, on October 8, 2014, we requested comments on Wyoming's amendment from the SHPO and ACHP (Administrative Record Nos. WY-51-04 and WY-51-05), but neither responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve Wyoming's September 30, 2014, amendment.

To implement this decision, we are amending the Federal regulations, at 30 CFR Part 950, which codify decisions concerning the Wyoming program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253) requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630 — Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not have effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866 — Regulatory Planning and Review and 13563 – Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771 — Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988 — Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct, rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Wyoming drafted.

Executive Order 13132 — Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Wyoming program submitted and drafted

by that State. OSMRE reviewed the submission with fundamental federalism principles in mind, as set forth in sections 2 and 3 of the Executive order, and with the principles of cooperative federalism set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and is “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 — Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175, and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal Government and Tribes. Therefore, consultation under the Department’s tribal consultation policy is not required. The basis for this determination is that our decision is on the Wyoming program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211 — Actions Concerning Regulations That Significantly Affect the Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045 — Protection of Children from Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A-119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of

small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a

statement containing the information required by the Unfunded mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 24, 2019.

David A. Berry, Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950 - WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.15 is amended in the table by adding an entry in chronological order by “Date of Final Publication” to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

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Original amendment submission date	Date of final publication	Citation/description

<p>* * * * *</p> <p>September 30, 2014</p>	<p>* *</p> <p><u>[Insert date of publication in the Federal Register]</u></p>	<p>Chap. 1, Sec. 2(aa)(i)-(iii), definition of control or controller;</p> <p>Chap. 1, Sec. 2(co), notice of violations;</p> <p>Chap. 2 (Title);</p> <p>Chap. 2, Sec. 2(a)(i)(B), related to adjudication requirements;</p> <p>Chap. 2, Sec. 2(a)(ii)(A)(I), related to adjudication requirements;</p> <p>Chap. 2, Sec. 2(a)(ii)(A)(II), related to adjudication requirements;</p> <p>Chap. 2, Sec. 2(a)(ii)(B), related to adjudication requirements;</p> <p>Chap. 6 (Title);</p> <p>Chap. 6, Sec. 4(b)(i)(A), related to blasting standards;</p> <p>Chap. 12, Sec. 1(a)(vii)(A), related to permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(vii)(B)(IV), related to</p>
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		<p>permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(vii)(E), related to permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(vii)(F), related to permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(x), related to permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(x)(D)(I), related to permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(xiv)(C) related to permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(xiv)(D)(II), related to permitting procedures;</p> <p>Chap. 12, Sec. 1(a)(xiv)(F), related to permitting procedures;</p> <p>Chap. 12, Sec. 1(b)(ii), related to permitting procedures;</p> <p>Chap. 16, Sec. 2(h), related to enforcement;</p> <p>Chap. 16, Sec. 4(c)(i), related to individual</p>
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		civil penalties; Chap. 16, Sec. 4(c)(i)(A), related to individual civil penalties; and also all minor grammatical changes.
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[FR Doc. 2019-26132 Filed: 12/3/2019 8:45 am; Publication Date: 12/4/2019]